

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-874063-D3 "R"
Issued to: ROGER J. BEROUD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD
2005

ROGER J. BEROUD

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 18 March 1974, an Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that, on 4 September 1973, Appellant was convicted in Delaware County Court, Media, Pennsylvania, a court of record in Delaware County, Commonwealth of Pennsylvania, for violation of the Commonwealth of Pennsylvania.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence certified copies of the indictments and court conviction.

In defense, Appellant offered in evidence his own testimony, that of a character witness and seven letters of character.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then entered an order revoking all documents, issued to Appellant.

The entire decision and order was served on 22 March 1974. Appeal was timely filed on 15 April 1974.

FINDINGS OF FACT

On 4 September 1973, Appellant was convicted in the Common Pleas Court of Delaware County, Media, Pennsylvania, a court of record, for violation of the narcotic drug laws of the Commonwealth of Pennsylvania. The specific offenses were possession and delivery of approximately three ounces of marijuana on two occasions. Appellant was ultimately sentenced to confinement for one to five years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) the Administrative Law Judge erred in refusing to exercise discretion or consider an order other than revocation,
- (2) the order is inequitable under the circumstances,
- (3) the order is contrary to law under the circumstances, and;
- (4) Appellant was denied due process of law.

APPEARANCE: Abraham J. Golden, Philadelphia

OPINION

Appellant's bases of appeal will be considered together, because they amount in essence to a challenge to 33 CFR 137.03-10, which directs the Administrative Law Judge to enter an order of revocation upon finding proved a charge of conviction of violating a narcotic drug law.

In his contentions that an Administrative Law Judge is vested with discretion under 46 U.S.C. 239b, Appellant takes great pains to distinguish the meaning of the word "may" from that of "shall." This analysis becomes irrelevant, however, in the face of the context of 46 U.S.C. 239b, which does not include the phrase "may revoke." The statute says, "The Secretary may... take action ... to revoke..." As explained in Appeal Decision 1971 (MOORE), the grant of discretion runs solely to the Investigating Officer, who decides whether or not to prefer charges. Note also that the quoted language provides for no sanction other than revocation. The order of the Administrative Law Judge in the instant case and the regulation pursuant to which that order was issued are fully consonant with the statute.

If Appellant believes that statute to result in a denial of due process of law, it need only be noted that administrative proceedings do not provide a proper forum for constitutional challenges to the duly enacted law of Congress. It must, however, be pointed out that Appellant's allegation that an order of revocation constitutes a second punishment for the narcotics violation is fallacious. Suspension and revocation proceedings are purely remedial in nature and directed toward the safety of life and property at sea. Revocation is not a criminal sanction and does not constitute punishment.

I am compelled to note that the present case, regardless of discretion, fully warrants an order of revocation. Appellant was

convicted of twice trafficking in substantial quantities of marijuana and these cannot be considered minor offenses. While Appellant may indeed have a valid basis for his claim of entrapment, suffice it to say that his conviction cannot be collaterally attacked in these proceedings. Should he ultimately be successful in having that conviction overturned by the courts, the procedure provided by 33 CFR 137.20-190(b) will be the proper avenue for the remedy Appellant seeks.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 18 March 1974, is AFFIRMED.

O. W. Siler
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 23rd day of August 1974.

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